

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on March 4, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Mary Caferro (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 56, 2/22/2005; SB 24, 2/22/2005;
SB 36, 2/22/2005
Executive Action: SB 36; SB 56

HEARING ON SB 56**Opening Statement by Sponsor:**

SEN. DAN MCGEE (R), SD 29, opened the hearing on **SB 56**, Revise membership of design-build advisory board. He explained that the concept of design-build is being used in construction projects worldwide. It means the design, engineering and construction components come under the umbrella of one contractor who oversees a project from start to finish. This is advantageous in that the work progresses in a more seamless fashion and problems are addressed by a single entity. In the 2003 Session, a design-build advisory board was created; among its members were two representatives of the highway construction and two from the engineering industries. It soon became apparent that if the Board's members could potentially bid on projects, it would present a conflict of interest. SB 56 eliminates the four industry representatives and replaces them with a representative of an association of the highway construction industry and one member representing an association of the engineering industry.

Proponents' Testimony:

Loren Frazier, Chief Engineer, Montana Department of Transportation (MDT), rose in support of SB 56, stating that the design-build concept was a very useful tool. Two projects are underway and a third one is being implemented; he added that the MDT is two years ahead of schedule.

Cary Hegreberg, Montana Contractors Association, informed the Committee that he was the construction industry representative on the Board. He echoed the Sponsor's assessment with regard to the conflict of interest and expressed hope that the design-build concept will be instituted in the future as it is a pilot project for now.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 7}

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, asked whether this concept would leave out the "little guy." **Mr. Frazier** replied that three projects were picked for the pilot program; one is a rest area improvement, the second a reconstruction project, and the third a bridge and safety improvement project. Due to their versatility, the projects encompass the industry as a whole and not just the large companies.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, contended that the provisions in SB 56 result in an imbalance on the Board between private and government interests. **Mr. Frazier** felt that it was balanced, being comprised of two industry representatives and two from the MDT. **REP. MALCOLM** contradicted, saying there were two other government representatives. **Mr. Frazier** explained that the representative of the Federal Highway Association was included because the Federal government funds 87% of the projects; and one member represented the bonding and surety industry.

VICE CHAIR BROWN asked Mr. Hegreberg whether private industry viewed the elimination of the four industry members as a problem. **Mr. Hegreberg** advised that his association had actually requested this as they could not find a member company wanting to serve on the advisory council when they potentially would be bidding on one of the projects. He surmised that the project was well underway, the criteria had been established and the Board was in more of a guidance mode; he felt comfortable in his role as liaison with the industry. **Mr. Hegreberg** added if, at some point, it was determined that the design-build process was not working, the Advisory Board could come to the Legislature and reshape it.

REP. EMELIE EATON, HD 58, LAUREL, ascertained that, in addition to the director, the Board was previously comprised of five private and three department representatives. She agreed that SB 56 provided for a more balanced make-up. **Mr. Hegreberg** concurred, adding that the bonding industry was necessary because highway projects had to be bonded.

REP. EATON wondered if there should be a fiscal note, observing that none was included. **SEN. MCGEE** advised the fiscal note showed zero impact.

Closing by Sponsor:

SEN. MCGEE addressed VICE CHAIR BROWN's concern, stating that the concept does not leave out the "little guy." Some of the firms are not necessarily large enough to take on a project on their own and would contract with businesses like his surveying company to do part of the work. A consortium of companies comes together and becomes the entity which gets the project done. In closing, he advised that this concept was established to serve the MDT, it was not meant to be a public entity such as the Environmental Quality Council.

{Tape: 1; Side: A; Approx. Time Counter: 7 - 18.5}

HEARING ON SB 24

Opening Statement by Sponsor:

SEN. BRENT CROMLEY (D), SD 25, opened the hearing on **SB 24**, Code Commissioner bill. He advised that the Code Commissioner makes corrections and eliminates outdated statutes or those no longer applicable and presents this type of bill every two years.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. SUE DICKENSON, HD 25, GREAT FALLS, ascertained that it was different from **REP. HARRIS'** bill which provided for eliminating obsolete laws; **SB 24** was more of a housekeeping bill meant to clean up language. **CHAIRMAN JENT, HD 64, BOZEMAN**, advised it was an editing bill. **SEN. CROMLEY** agreed, adding that the Code Commissioner is statutorily required to do this every two years. He stressed that the bill did not include anything of substance.

Closing by Sponsor:

SEN. CROMLEY closed.

{Tape: 1; Side: A; Approx. Time Counter: 18.5 - 24.6}

HEARING ON SB 36

Opening Statement by Sponsor:

SEN. JOHN ESP (R), SD 31, opened the hearing on **SB 36**, Direct Code Commissioner to revise and re-codify laws on a title-by-title basis. He stated the bill provides for the re-codification to be secondary to the Commissioner's other duties, but added the Legislature planned to add funds into **HB 2** to pay someone to undertake this in the interim.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR BROWN asked whether there should be a fiscal note because of the imminent contract. **SEN. ESP** advised the revision was to be secondary to other duties and may not get done. **VICE**

CHAIR BROWN wondered whether this could be accomplished at the Legislature's direction without a new law. **SEN. ESP** agreed this was entirely possible. He advised that in the more than thirty years since the 1972 Constitutional Convention, a title-by-title revision had only been done occasionally. SB 36 directs the re-codification to be done in the interim; after that, it probably would not be done again for another twenty-five to thirty years.

CHAIRMAN JENT surmised the provisions of SB 36 were appropriate in the case of the newly passed DUI laws; the Commissioner would have to re-codify Title 61, Chapter 8, MCA, as he had to determine where the new laws fit in. **SEN. ESP** agreed, adding the Commissioner had suggested doing a title-by-title bulk-revision since it had not been done for a long time.

CHAIRMAN JENT observed that this applied to the session laws as well; the Commissioner would organize and place them where it made the best sense.

{Tape: 1; Side: B}

Closing by Sponsor:

SEN. ESP closed.

REP. JOAN ANDERSON, HD 59, FROMBERG, agreed to carry SB 36.

EXECUTIVE ACTION ON SB 36

Motion: **REP. OLSON** moved that SB 36 BE CONCURRED IN.

Discussion:

REP. EATON asked how this bill compared with **REP. HARRIS'** bill. **CHAIRMAN JENT** explained that language with regard to eliminating archaic and obsolete laws is already in statute; all SB 36 proposed to do was the re-numbering. He asked **Sheri Heffelfinger**, Legislative Services Division, to elaborate.

Ms. Heffelfinger explained that after each session, the Code Commissioner and other attorneys in his office have to redo and re-publish all 99 Titles; they take each Title, assign numbers and codify it section by section. She advised that Title 20, the School District Title, does not have reserved sections and when a new law is passed, it cannot be numbered in the order it needs to be because that number might be taken. Usually, there are reserved sections so that new laws may be inserted. When it gets to the point that no more numbers are available, new laws have to be tacked on in a separate part or general provision where they

may not really fit. That is why every so often, the Legislature will do a "general revision" whereby the entire code is rewritten all at once. This bill allows the Commissioner to do it title-by-title. **Ms. Heffelfinger** referred to a comment by the Sponsor regarding the Motor Vehicle Code, Title 60, and commented that this particular section had been amended so many times that it became unwieldy, and a bill as thick as a book was needed to revise the entire Title.

Vote: Motion carried unanimously by voice vote; REPS. SMALL-EASTMAN and CAFERRO voted aye by proxy (REP. CAFERRO submitted her proxy on 3/11/05). REP. ANDERSEN agreed to carry the bill.

Motion/Vote: REP. EATON moved that SB 36 BE PLACED ON THE CONSENT CALENDAR. Motion carried 15-0; REP. SMALL-EASTMAN voted aye by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 8.4}

EXECUTIVE ACTION ON SB 56

Motion: REP. BROWN moved that SB 56 BE CONCURRED IN.

Discussion:

REP. HAL JACOBSON, HD 82, HELENA, noted this group served in an advisory capacity and would not make the final decision on the awarding of contracts; this still rested with the MDT. Therefore, the Committee should not be overly concerned with the make-up of the group.

CHAIRMAN JENT agreed, observing there was obvious consensus among the parties involved.

REP. BERNIE OLSON, HD 10, LAKESIDE, recalled hearing the original bill in the House Transportation Committee in 2003 and wondered why SB 56 was heard in this Committee. CHAIRMAN JENT surmised it was because State Administration has jurisdiction over the composition of all boards.

VICE CHAIR BROWN commented her concerns about the Board leaving out the "little guy" had been addressed so well that she agreed this bill provided a positive change, and one she would support.

Vote: Motion carried unanimously by voice vote; REPS. SMALL-EASTMAN and CAFERRO voted aye by proxy (REP. CAFERRO submitted her proxy on 3/11/05). REP. EATON agreed to carry the bill.

Motion/Vote: REP. MACLAREN moved that SB 56 BE PLACED ON THE CONSENT CALENDAR. Motion carried 15-0 by voice vote; REP. SMALL-EASTMAN voted aye by proxy.

REP. WILLIAM JONES, HD 9, BIGFORK, stated that the Committee had an obligation to read and study SB 24's summary thoroughly before taking Executive Action. CHAIRMAN JENT agreed, adding a change of form or editing for grammar could effect a change of substance, and the courts could interpret a bill in a way the Legislature had not intended.

[EXHIBIT](#)(sth48a01)

ADJOURNMENT

Adjournment: 8:50 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth48aad0.PDF](#))